

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
May 23, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, May 23, 2017 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

Jack Currier, Chair
JP Boucher, Vice Chair
Mariellen MacKay, Clerk

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

- 1. Rubin Nashua, LLC d/b/a Bernie & Phyl's Furniture (Owner) Viewpoint Sign & Awning (Applicant) 243 Daniel Webster Highway (Sheet A Lot 128) requesting variance to encroach 11 feet into the 25 foot setback to an intersection (off Spit Brook Road) to replace an existing ground sign with a new ground sign. GB Zone, Ward 7. [TABLED FROM 5-9-17 MEETING]**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Scott Spaulding, Viewpoint Sign & Awning, Northborough, MA. Mr. Spaulding said at the last ZBA meeting, the request was to seek relief from the corner setback for a new ground sign, and the concern of the Board was the skirt at the bottom of the sign, that it may not allow enough visibility under the sign, and the discussion was to come up with a different design. He said that a new design has been submitted.

Mr. Currier said that the Board members have a copy of the new design elevations.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Boucher said that this is exactly what the Board was looking at for a revision of the sign. He said it is clear that the view going around the intersection will be improved.

Mrs. MacKay agreed, and as you drive down Spit Brook Road, you can look on Daniel Webster Highway and have an unobstructed view.

Mr. Currier agreed as well.

MOTION by Mr. Boucher to approve the variance application on behalf of the applicant. He said that the variance is needed to enable the applicant's proposed use of the property, given the special conditions of the property, the Board spoke about the conditions of the previous meeting, that this intersection has changed dramatically, and the road has come in towards the building, and there is no other feasible way to put a ground sign there without encroaching into the setback. He said that there is no other method reasonably feasible for the applicant to pursue, other than an area variance.

Mr. Boucher said that the proposed use would be within the spirit and intent of the ordinance, it will not negatively impact adjoining property values, it is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

2. Paul B. & Marie T. Lamere (Owners) 9 Reservoir Street (Sheet 65 Lot 64) requesting special exception for an accessory (in-law) dwelling unit. RA Zone, Ward 3.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Paul Lamere, 9 Reservoir Street, Nashua, NH. Mr. Lamere said that the house has had the in-law apartment for quite some time, but apparently, it has never been permitted, and the house will be going on the market soon, and would like to have it properly permitted, with all of the City standards for an in-law apartment.

Mr. Currier asked if the entrance to the unit is on Stark Street.

Mr. Lamere agreed, he said it's always been there.

Mr. Currier asked if anything is changing on the house.

Mr. Lamere said no changes, it's all inside.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mr. Boucher said that the owner should go over the accessory dwelling unit special conditions.

Mr. Currier read the new accessory dwelling unit conditions, and Mr. Lamere agreed with them all, and they'll all be satisfied.

Mrs. MacKay said that all the conditions are met, and all they're doing is legitimizing the unit that's always been there.

MOTION by Mr. Boucher to approve the special exception on behalf of the owner as advertised. Mr. Boucher said that the use is listed in the Table of Uses, Section 190-32.

Mr. Boucher said that the use will not create undue traffic congestion, or unduly impair pedestrian safety. He said it will not overload public water, drainage or sewer or other municipal systems. He said that all of the special regulations will be

met per testimony, and that the use will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals, or welfare of the residents.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 3-0.

3. Patricia Kudzma (Owner) 92 Robinson Road (Sheet B Lot 1009) requesting variance to encroach 6 feet into the 25 foot required front yard setback to replace existing front steps and construct a 6'x21' farmers porch. RA Zone, Ward 6.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Patricia Kudzma, 92 Robinson Road, Nashua, NH. Mrs. Kudzma said that there is a set of front stairs that is out of Code, it's 10¾ inches, and the step going into the house is terrible, and it's difficult going into the house, so they need to be replaced. She said that as long as she was replacing the stairs, she thought it would be nice to make a little farmers porch to enjoy the front of the house. She said she's spoken to all the neighbors, and they're fine with it.

Mr. Currier said it's a very nice property, nice yard. He said it looks as if the house to the left and the right are a little bit closer to the road, and that the proposed deck, while it's a little bit in the front yard setback, it doesn't appear as if it would be out of character.

Mrs. Kudzma agreed.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

MOTION by Mr. Currier to approve the variance application on behalf of the owner as advertised. He said that the variance is needed to enable the applicant's proposed use of the property,

which is a moderately sized farmer's porch on the shady side of the house, which is advantageous for the short summers we have here.

Mr. Currier said that the proposed use would be within the spirit and intent of the ordinance, and that there is no testimony one way or another regarding any negative effects on property values.

Mr. Currier said it is not contrary to the public interest, and substantial justice would be served to allow the encroachment for the farmer's porch.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

4. Prem S. & Dolly Sinha (Owners) RJM Management (Applicant) 17 Lisa Drive (Sheet B Lot 2457) requesting variance to encroach up to 7.5 feet into the 40 foot required rear yard setback to construct an attached three-season porch and deck. R18 Zone, Ward 8.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Ray McCann, RJM Management, Tewksbury, MA. Mr. McCann said that they are seeking a variance for 7.5 feet of an encroachment into the 40 foot rear yard, to construct a three-season room and deck. He said it shouldn't be a hindrance to the neighborhood in any way.

Mr. Currier showed the drawing of the side view, and asked if the 7.5 feet is the deck portion that's encroaching.

Mr. McCann agreed.

Mr. Currier pointed out the sunroom on the plan, and asked if that will be new as well.

Mr. McCann said yes. He said that they've already been approved for a house addition, that was all outside of the setback, it's

a master bedroom addition on the second level, and the three-season room, there is a deck that comes off it, on the top.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Kevin Nadeau, 22 Middle Dunstable Road, Nashua, NH. Mr. Nadeau said he lives directly behind the property.

Mr. Currier described the nature of the variance and the work being planned. He said that the deck would be going 7.5 feet into the 40 foot setback.

Mr. Nadeau said that his concern is his privacy, and wondered if there was any alternative to the deck that would not encroach. He said he would like to maintain his privacy, and if there is any alternative they'd want to know, but was just being proactive in case they want to sell their home in the future, and what the value of his property would be.

Mrs. MacKay said that there are some significant trees, and they provide a fairly substantial barrier.

Mr. Currier said that the addition wouldn't impact anyone on Lisa Drive. He said his takeaway is that it would barely even be seen, summer or winter, as the lot does slope off a lot. He said that the Nadeau's house is so far down the hill, and so vegetated, that it may not even be seen.

Mr. Nadeau said he's just trying to be proactive.

SPEAKING IN FAVOR - REBUTTAL:

Mr. McCann said that there was an alternative that was considered. He said that the property value will increase from this addition, as well as the surrounding properties, they are adding a lot of value to the property, and it will be in a very well-designed way. He said that the design that is proposed works the best, and feel that the encroachment is very minor, and being a deck, it is not roofed.

Mrs. MacKay asked if the backyard trees will provide a shield

for Mr. Nadeau, and seeing that each resident wants privacy, and asked if the trees will do that.

Mr. McCann said that Mr. Sinha will even be adding some landscaping to provide even more privacy, for both houses. He said that this project will add value to the neighborhood.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

None.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner. He said that the variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, the benefit sought by the applicant cannot be achieved by some other reasonable method feasible for the applicant to pursue, other than an area variance.

Mr. Boucher said it's within the spirit and intent of the ordinance and it will not negatively impact adjoining property values, and there was no official testimony for or against values, and the Board feels that it will not affect values.

Mr. Boucher said it is not contrary to the public interest, and substantial justice would be served.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 3-0.

5. Tanya Reuscher (Owner) 278 East Dunstable Road (Sheet B Lot 2697) requesting variance to encroach up to 16 feet into the 40 foot required rear yard setback to construct an attached 16'x16' home addition with a 16'x34' deck. R18 Zone, Ward 8.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Tanya Reuscher, 278 East Dunstable Road, Nashua, NH. Ms. Reuscher said this all started when they wanted to add a 16'x16' three season room on the back of the house, and they were trying to figure out how to connect it to the existing multi-level

deck. She said that the deck was in place when the home was bought four years ago.

Ms. Reuscher said that the deck was 30 years ago, and it was in the best interest to replace it with one multi-level deck. She said that the encroachment is primarily due to the right hand side of the deck which was already encroaching.

Mr. Currier asked if the footprint of the deck would be the same as the existing deck.

Ms. Reuscher said it's close to the right section that has the variance is 16'x16', and in looking at the plan, the kitchen bump out exceeds that by two feet, so about two feet.

Mr. Currier said it seems as if what is proposed is very close to what is already there.

Ms. Reuscher said that is correct. She said it's a two-level deck. She said that the property does slope down in the back.

Mr. Currier asked about the sewer easement in the back.

Ms. Reuscher said it is on her property, and isn't sure if it's on the neighbor's property.

The Board members all expressed support for the application.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application on behalf of the owner. He said that the variance is needed to enable the applicant's proposed use of the property, which is essentially replacing a deck somewhat in kind, but a bit larger, as they add the addition to the home. He said that it is not an unreasonable request, given the shape of the property and the situation of the house, and that the multi-level deck has already been present for many years.

Mr. Currier said it's within the spirit and intent of the ordinance and it will not negatively impact adjoining property values.

Mr. Currier said it is not contrary to the public interest, and substantial justice would be served.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

6. Jose G. Balderas (Owner) 65 Nagle Street (Sheet 102 Lot 201) requesting a determination whether a material change of circumstances affecting the merits of the application has occurred, or that the application is for a use that materially differs in nature and degree from the variance denied by the ZBA on 9-13-16; and, if so, requesting the following: 1) special exception to allow an accessory (in-law) dwelling unit; and, 2) variance to exceed maximum size of an accessory dwelling unit, 750 sq.ft allowed - 1,100 sq.ft proposed. RB Zone, Ward 6.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay

Mr. Currier said that the Board heard this case last September, for converting a single-family home into a two-family home, it happened over the course of two meetings, and was denied. He said the request is now for a special exception for an accessory dwelling unit, and a variance for the size of the unit, where 750 sq.ft is allowed, and 1,100 sq.ft is proposed. He said that the first action of the Board is to determine if there is any material change of circumstances, or if this application is materially different from the previous one.

Board members agreed that it is a materially different application, as the special exception is a different application rather than the two-family that was denied the previous time.

MOTION by Mr. Currier to hear the case, as the Fisher vs. Dover determination is satisfied.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

Crystal Balderas, 65 Nagle Street, Nashua, NH. Mrs. Balderas said that they are coming back to the Board for the accessory in-law apartment, she said that everything is already there, they have their own entrance. She said that she attached the floor plan layout in the application. She said that there is also an entrance from the main house into the accessory dwelling unit upstairs, and it is family.

Mrs. Balderas said nothing will change, no construction or anything added on, it's all been there since the 1970's. She said it has its own plumbing, own A/C units. She said that they are requesting a variance, as the Code now allows 750 square feet, and the unit is 1,100 square feet.

Mr. Currier went over the new Ordinance with respect to accessory dwelling units.

Mrs. Balderas said that they meet all the criteria, except for the size, but there is a variance submitted for that.

SPEAKING IN FAVOR:

Gary Graves, 61 Nagle Street, Nashua, NH. Mr. Graves said he is in support of the request.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Mrs. MacKay said she didn't see any reason to deny the request, and thanked Mr. Graves for coming to show his support.

Mr. Boucher said that there won't be any absentee owner issue here, and said it is a very reasonable request, and has no reservations in approving this request.

Mr. Currier agreed, it's much less intensive than a two-family, and it works much better.

MOTION by Mr. Currier to approve the special exception on behalf of the owner as advertised. Mr. Currier said that the use is listed in the Table of Uses, Section 190-32.

Mr. Currier said that the use will not create undue traffic congestion, or unduly impair pedestrian safety. He said it will not overload public water, drainage or sewer or other municipal systems. He said that all of the special regulations will be met per testimony, and that the use will not impair the integrity or be out of character with the neighborhood, or be detrimental to the health, morals, or welfare of the residents.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

MOTION by Mr. Currier to approve the variance application on behalf of the owner. He said that the variance is needed to enable the applicant's proposed use of the property, while perhaps it could be limited to 750 square feet, the existing arrangement of the structure is 1,100 square feet, and it's reasonable that the applicant can pursue the in-law apartment at that size.

Mr. Currier said it's within the spirit and intent of the ordinance, as nothing is changing with the structure, and the Board finds that it should not impact the property values of surrounding parcels.

Mr. Currier said it is not contrary to the public interest, and substantial justice would be served.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

MINUTES:

5-9-17:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 3-0.

REGIONAL IMPACT:

Mr. Falk said that there is an extra week in the schedule, and the Agenda is not set. He said that there are about seven cases, and once the Agenda is determined, he will e-mail a copy to the Board members.

**** 10-minute recess ****

REHEARING REQUESTS:

122 Manchester Street:

Mr. Currier said that there are four questions that by law, we discuss. He said the first question is if there was any procedural error, including improper notice, denying someone the right to be heard, etc.

Mr. Boucher said I don't think so, no.

Mrs. MacKay said no.

Mr. Currier said he doesn't think so, he said that the Board allowed everyone who wanted to speak to speak, extending some testimony where the Board felt it was appropriate because it was such a deep case, the notice by the City to all the abutters, I think, was thorough, all the abutters were notified, so, I concur that there wasn't any procedural error.

Mr. Currier said going on to question two, and asked if it was an illegal decision, in other words, did the Board fail to completely address each of the points of law required for the variance.

Mr. Boucher said that he's deep in thought right now.

Mr. Currier said he thought the Board spent a lot of time discussing the points of law, Mr. Sokul makes the argument that we get it wrong, or got it wrong, and that, to summarize his arguments, that the Federal law is, and the State law is not as clear as the Nashua law, and that for that reason, in his

argument, he thinks that we have gotten it wrong, and also he speaks to the point number seven, and opened up the Code book, that homes for the elderly, point number seven, he's highlighted the elderly or other persons who are unable to fully care for themselves, the elderly or other persons who do not desire to live independently, the care typically includes room, board and supervision and the assistance in daily living, such as housekeeping services. He said in his opinion, that element of number seven was what the Board discussed a lot, and, believes Mr. Sokul is saying that it's not cut and dry, and the bar isn't that high, and that by us, or me, believing that it has to meet that test, is an illegal decision. He said he hears his point then, and hears it now in the rehearing request, but believes that this Board, and my role on this Board, is to interpret the Codes that are here in front of us, and believes that the definition of elderly does meet that test, there's another point that he makes in the rehearing request that ties into this question, and that is the point of the other two elderly housing, or over 55 that were approved by the City of Nashua, and said his feeling of that is if he was asked if they meet elderly housing by these regulations, he said they do not, yet they were approved, but they never came to the Board, so, I see that two wrongs don't make a right, while those were approved, he said in his opinion he shouldn't be approving this, he said he sticks with this definition of number seven, and feel it needs to meet that test, so, that's a long way of saying, that while he thinks the applicant, Attorney Sokul is making the argument that it's an illegal decision, he said he doesn't believe it was an illegal decision, and believes that we addressed all the points of law, and that's where I'm at on this one. He said he's looking for two other opinions on question number two.

Mr. Boucher said he was the lone dissenter on that vote. He said again, when he looked at this, he said he's trying to look at it from a different point of view, but struggle with the legal decision, but still stands in the same position he was on the night that we made the decision. He said he probably has a full opposite view of what you (Mr. Currier) just said, and that's why we're here. He said that what he struggles with in the rehearing request is the illegal decision and asked to refresh his memory, or help me again, when we say, when we refer to as an illegal decision, you know, decisions can be made, and not everybody agree with it, and still be legal, or are we talking a legal decision, like we completely did something that

was not correct from this point of view, so help me with that a little bit.

Mr. Currier said his thought on that is that he thinks you encapsulated first of all, the meeting pretty well, in that there were four who felt it doesn't meet the definition of elderly housing and the center, or yourself, that felt it does meet the test of elderly housing. He said that was the way things panned out on the night we voted on this, and it's always a struggle when a dissenter is now confronted with a rehearing request, because your passionate opinion was that it is elderly housing, mine isn't, we differ on that, so then you ask, was it illegal, he said his answer on that is that often times he's been a dissenter on a rehearing request and the way he answers that is that if he thinks it is completely out of whack, then maybe it's illegal, but if he feels that the discussion was within the realm of reasonableness, that the different Zoning Board members can come into play with, and something wasn't completely out to lunch, then, he said his experience when he's the dissenter on a rehearing request, if he feels that the opinions are reasonable that somebody comes up with, even though he disagrees with them, he feels it's legal if it was just a gross misinterpretation or something out to lunch, he said he guessed that could be illegal. He said he doesn't know if he ever felt an illegal decision was made, and can't remember as he sits here. He said that illegal is a pretty strong word, but that's the word that is there before us.

Mr. Boucher said that when he looks at this, sometimes what he tries to do is look at it, as did we not do anything in question one, right, that would cause this to be an illegal decision, so he doesn't know if it's really tied. He said his struggle is, is thinking the same way as you can, so, he can look at this as though he does not agree with, and was very specific about one portion of the, and that's why he dissented, though he doesn't agree, he doesn't think that he believed that there was something illegal about the decision that was made. He said he doesn't see it, it's not hitting him in the face.

Mr. Currier said that he wanted to jump in, one of the points that Attorney in the rehearing request, and maybe you can argue it could this be illegal, was about the email, or text or whatever it was that was sent, and you might say that the charge, or the discussion in the rehearing request was, was it a preset decision, was the Board doing the bidding of the Mayor,

and wanted to speak about that, because, he can only speak for himself, he said he certainly had no idea where anybody else stood on this decision coming into the meeting. He said he didn't discuss it with anybody else, and didn't discuss it, nor does he regularly talk with the Mayor, and certainly had no idea where he stands before or after the case on this case. He said the first and only thing he knew was that when he read it in the rehearing request he guessed it was, and is only speaking for himself. He said for himself, he wasn't doing anybody's bidding, or discuss it with anyone, he said his opinion was what he formed from reading over and over Section 190-42, and the merits of the case, and is only speaking for himself, and asked as Chair that we each address that, because it's actually kind of alarming to him, it's embarrassing, and it sounds that the Board is doing the bidding of the Mayor, that wasn't from him, he'd like Mr. Boucher to kick off first again, with his thought on that.

Mr. Boucher said that his opinion is, and again, we don't talk to one another about the cases before we come to the Board, so it's not like he was polling everybody or asking what happened, he said he just read what he read. He said he generally thinks that we're all good people, and doesn't think that there is any malice that's done on purpose, and does believe in this case, or any case, that it's all about perception, right, so we don't do things, generally people are not doing things to hurt each other or to create undue tensions, or to do these things, but it's just a perception of it, right, and he believes that, he does not have any contact with the Mayor, and the Mayor doesn't talk to him about anything, so he has no idea about any of this, so, his opinion is, perception is there, and that's what the public would see, that does not mean that he believes that anybody was in collusion, that is not for him to judge. He said all he can say is what he sees at face value. He asked how does this affect if this is truly something that would effect it, then it would have been a three, then if you eliminate that, if you throw that in the mix, there was five voters here, so that could have went to 3-2, so it still would have ended the way it did, if there was no other means of conversation, so, he said that there's no information other than what was in the text, but from sitting from the outside of this Board looking in, there's got to be questions, that's a natural reaction to the question, so, does that rise to saying hey, just that in itself should have a rehearing to be fair and impartial, he said he doesn't know, he can see it going both ways. He said he makes no judgements,

knows Mrs. MacKay and the Mayor to be, the only interaction he has with them is professional and honest, but again, is not looking at it any deeper than that.

Mrs. MacKay said that first off, she said she didn't know a thing about 122 Manchester Street until she got the packet. She said she never spoke to the Mayor, and never knew his opinion, there was no coercion, there was no request that she absolutely vote how he wanted, she said her determination, her decision, was made based upon information that came here, it was based on information that everybody said, it was based on information from not one, but two attorneys, we had the benefit of hearing both sides, not just one, and as for the text, she stands by what she said. She said that the Zoning Board absolutely did its job. She said it's an honor and a privilege to serve with each and every one of you, and to be a part of such an intricate, well-vetted case was amazing, and the fact that she did do the text, sometimes she sees the Mayor afterwards because the Alderman would still be meeting, and in her capacity as the Chair of the Nashua delegation, she said that she does encounter the Mayor, but on legislative issues. She said she files legislation on behalf of the City of Nashua. She said that is separate and apart, but that relationship is existing, he is someone she's known for years, but, did she text him for any other reason than to say well done, good job, it was after a public decision, it was in the public domain, it was on tv, there was no malice or forethought, there was no nefarious covert reasons, it probably was just, when you go to Market Basket, and you come through the checkout, and the checkout person is really kind to you, and the person bagging is wonderful, she's the guy who goes to the manager and says well done, I'm glad you've hired those people, it made my experience really good, and I'll come back. She said basically in her head, this was the same thing, this was well done, it was just amazing. She said that in her capacity in Concord, we are very open, very transparent, and that would be a determination that would have gone back to the Chair and Vice Chair of the committee. She said it was the natural order of things that get done, and how they get done in her world. She said it meant nothing more than what it says, it was no more, no less. She said she doesn't know what else to say, other than does she think she did anything wrong, no. She asked if she would do it again, yeah probably not because it caused a firestorm and made a lot of people wondering about things, and so, for that reason, no, but for the reason of did she do something intrinsically

wrong, or horrible, no she did not. She said that for the determination and the decision, again, we heard from two attorneys, not just one, and wondered if staff had the opportunity to hear both sides, would the decision they made be the same. She said that there's all those thoughts that go through your mind, but the decision she made was made right here at the time of the hearing, and took everybody's input into consideration, the attorney's, the owners of the property, or the applicants, the neighbors, fellow Board members, Carter, everybody's comments carried equal amount of weight, and that's how the decision was made, not because she had any other information coming in. She said she came in just as blind as anyone else, and did not know a thing.

Mr. Currier said that the topic of the email was, he said he was really trying to have all five of us here, and it backfired, by sending it to a date when we thought someone would be here and we actually have less here than would have been here if we had it earlier, and it's a lesson learned for me. He said that here we are, there's three of us, and in absentia of the other two voting members, Ms. Vitale and Mr. Shaw, he said that as he sits here, his opinion that is that there was no collusion between them, he said he's worked with them for many years, but that's just his opinion, he said he's not feeling that there was an injustice or bidding being done on those two, but that's just opinion.

Mr. Currier said let's move on to the third question.

Mr. Boucher said just a comment, again, this has nothing to do with any personal views or anything, but as he thought about it, and again, my opinion, because of what he thought was not an indication of anybody's forethought or malice, but the perception from the public. He said he's one to think that, not in every case, but it's applicable here, where just the perception of it and the importance of this Board, would it be more harm in rehearing it, or less harm in rehearing it, based upon the fact that there could be a perception, and that's not a perception pointed at Mrs. MacKay, it's just the general perception that even though we can sit here and prove that that's not the case, just the idea that may linger. He said in his view, to put that completely to bed, and to say, you know what, we're not even going to take a chance, you know, it would be, it would serve better to rehear it, rehear the case, and maybe the same outcome comes out, but rehear the case, in light

of what the perception may have been for the original decision. He said he's not arguing whether or not the decision at this point is legal or illegal, he's just saying it's about perception, and maybe what he's saying has nothing to do with the law or the legality of it, it's just again, his opinion, so he wanted to put that out there.

Mr. Currier said to follow up on that, in knowing that he was not pre-dispositioned one way or another on this, and hearing the testimony from you two, certainly the rehearing request before us is to nix a member and rehear the case, and like you, doesn't see the benefit to that, sure, mathematically, we had a 4-1 vote, and one of the fours is being requested to step down, but mathematically, that would help the applicant if you do the simple math, but doesn't find value in that, he said if we hear the case again, we'll be hearing the exact same information from both parties, and essentially, if you recuse yourself, if you have the right not to anyway, and, if there is another member pulled in, he said he just doesn't see value in that, it's a huge burden and cost across the board, and doesn't find value in it.

Mr. Currier said that moving on to question number three, he asked if the request for rehearing contain any new information not presented or available to the Board at the original public hearing - thoughts on that. He asked if Mrs. MacKay could kick that off.

Mrs. MacKay said if we're looking at the merits of the case, no, she said she didn't think it does.

Mr. Boucher said again, he's in a different position, so, in general, he'd say could possibly be, because there is some definition that wasn't there before, but again, that's his opinion, so he said he doesn't know what that rises to, but, just making that comment.

Mr. Currier said his thought on question number three is in the rehearing request, there are several key points on the top of page number 7, there's a point about a housing community can only demonstrate three factors, that is a criteria which was argued in the very beginning, it's reiterated here, but that was argued before, and then down a paragraph under the current State law, that, he feels was argued in the very first presentation, the Federal law, the State law, and thought it was being re-

represented here without new information, he thought the information was very complete and thorough on the first go-round, and then on page 8, in the middle, about that 122 would comply with all Federal and State laws and the applicant has demonstrated such compliance, again, that's a strong point on behalf of the rehearing request, but it's not new information, and still disagrees with it, it needs to come up as part of the rehearing request, but doesn't find it as new information. He said that even point number five, about staff is treating them differently you might say, than the other two, that argument was discussed before, and thinks that the Board, certainly in his opinion, and the majority was that if two mistakes were made before, that doesn't mean that the Board, I feel that this should be defined as elderly housing now, and those others probably should have been, but they weren't, but said in his mind, that wouldn't change his opinion that this is elderly housing when he doesn't think it meets it. He said that's kind of the long way of him saying that he doesn't think that there is any new information here, it's just a re-stating of what was argued very thoroughly the first time.

Mr. Currier said question number four, is there anything else anybody wants to say on question number three?

Mr. Currier said on question number four, is there anything that would/could cause the Board to make a different decision, does anybody want to kick that off. He said if not, he'll kick it off.

Mr. Boucher said he really doesn't have anything to say about that.

Mr. Currier said somebody's got to go first, it'll be me. He said he didn't find anything new in the rehearing request that would cause me to make a different decision, the biggest element of newness here was the communication with the Mayor, and in his mind, Mrs. MacKay has spoken to that, so there's nothing here that would cause him to make a different decision, or the Board to make a different decision in my opinion. He asked if anyone would like to jump in on question number four, please.

Mrs. MacKay said she didn't think so either, she said she has spoken to that text, and did nothing wrong and would not recuse myself today and won't recuse herself tomorrow.

Mr. Boucher said he thinks he made his opinion known, what his thoughts are, again, it's not a judgement, it's just what he thinks, so, I probably have a different view on that, so, again, could see cause for the things that I talked about.

Mr. Currier said that we've kind of batted around the four questions, and in summary, as he's answered the four questions, he feels that the Board should not rehear the case, we've discussed the four questions, and you know what my opinion is on the four of those, and in summary, don't feel that we should rehear the case. He said he's trying to encapsulate how we feel as a summary, and wants to know how you two feel as a summary of how you feel about the rehearing request overall.

Mr. Boucher said we're going to take a vote, so, I know the position we're in right now. He said a 2-1 won't do anything, and we'll be here all night, and if that's what it has to be, that's what it is. He said what he'd like to do is, is it sounds as if both of you are going to deny the rehearing request, right, and that's what it appears to be. He said he would just like to reiterate in the motion that a general reason why he's going to agree to deny the rehearing request, but make clear that he has positions that don't align with the general Board, and it sounds convoluted, but at this point this will move it on to the Court, because it does a disservice to keep it here, and it's very clear that if I hold onto this, nothing's going to happen, unless we keep tabling this, but that's not the way the process is designed, so, my position will be, most likely, to agree for denying the rehearing request, but make it clear that I have reservations on a couple of things, just for the record.

Mr. Currier said so noted. He said with that, he'll hazard a motion.

MOTION by Mr. Currier to deny the rehearing request at 122 Manchester Street, the motion is made by summarizing the four questions and that there was no procedural error, the decision was not illegal that the Board made, the rehearing request does not contain any new information not presented or available for the Board at the Public Hearing, and there is nothing that would/could cause the Board to make a different decision, so based upon the discussion we had on the four questions, the motion is to deny the rehearing request.

SECONDED by Mrs. MacKay.

Mr. Boucher said he will support the denial for the rehearing request, but for the record, will say that he has reservations or concerns about the topic of the illegal decision, in other words, believes that in a couple of these, we ticked through that there is some more items that more definition that believe could be pertinent, and spent some time talking about perception and what that means to this Board, again, it is not a personal indication on anyone on this Board, it's just his feeling from the public view of this Board, so, again, I state those items that I talked about before, and with reservation, I will go with the denial of the rehearing request for the record.

MOTION CARRIED UNANIMOUSLY 3-0.

Mr. Currier said that there is no other business to attend to, as it's been covered already this evening.

ADJOURNMENT:

Mr. Currier called the meeting closed at 8:37 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing